

# Anti-Retaliation

## 1008.1 PURPOSE AND SCOPE

Best Practice **MODIFIED**

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for nondiscriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or memorandum of understanding.

## 1008.2 POLICY

Best Practice **MODIFIED**

The Indio Police Department has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

### 1008.2(a) DEFINITIONS

**Affirmative Duty:** The personal responsibility and obligation of an employee to report wrongdoing — rather than to provide such information only when requested.

**False Report:** A report that is not made in good faith and is based on information that is known or reasonably likely to be inaccurate; intentionally or negligently ignores exculpatory or mitigating information; or is made with the purpose of harassing or wrongly incriminating another employee.

**Good Faith Report:** A report that provides allegations concerning an employee who is reasonably believed to have purposely committed a serious violation of departmental policy, procedures, rules, or laws.

**Public Disclosures:** Statements made to the media or information entered in any forum that is available to the public—such as social media websites—that provide information that is critical of this department, its personnel, or both.

**Retaliatory Conduct:** Conduct or action designed to serve as retribution against an employee who, in good faith, has reported or otherwise provided information regarding misconduct against another employee. In the context of this policy, retaliatory conduct includes any deliberate, purposeful actions or failures to act directed against employees that cause or that could reasonably be expected to cause physical harm, property damage, significant emotional stress, or other

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serious negative effect on another employee; designed to ridicule or embarrass; or could seriously impair the efficiency, safety, or effectiveness of that employee, this department, or both.

Such conduct may take many forms, including but not limited to, bullying; persistent offensive comments, threats, or intimidation; false accusations; isolation; ostracism; posting of secure or personal information on the Internet; or acts that malign or disparage an individual's reputation.

**Serious Acts of Misconduct:** A deliberate act or failure to act that could reasonably form the basis for significant disciplinary action against an employee. Such disciplinary action includes suspension, demotion, reassignment, or termination.

### **1008.3 RETALIATION PROHIBITED**

Federal **MODIFIED**

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion.
- Extending the probationary period.
- Unjustified reassignment of duties or change of work schedule.
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- Taking unwarranted disciplinary action.
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- Shunning or unreasonably avoiding a person because he/she has engaged in protected activity.

### **1008.4 COMPLAINTS OF RETALIATION**

Best Practice

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, command staff member, Chief of Police or the City Director of Human Resources and Risk Management.

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false, with willful or reckless disregard for the truth or falsity of the information or otherwise act in bad faith.

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Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

### **1008.5 SUPERVISOR RESPONSIBILITIES**

**Best Practice** **MODIFIED**

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.
- (b) Receiving all complaints in a fair and impartial manner.
- (c) Documenting the complaint and any steps taken to resolve the problem.
- (d) Acknowledging receipt of the complaint, notifying the Chief of Police via the chain of command and explaining to the member how the complaint will be handled.
- (e) Taking appropriate and reasonable steps to mitigate any further violations of this policy.
- (f) Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.
- (g) Periodic follow-up with the complainant to ensure that retaliation is not continuing.
- (h) Not interfering with or denying the right of a member to make any complaint.
- (i) Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.
- (j) First-line supervisors bear a responsibility to ensure that all employees under their supervision fully understand the importance of adherence to departmental policies, procedures, and rules and that they also understand the department's commitment to ensuring employee compliance.
- (k) No supervisor shall tolerate nor engage in retaliatory conduct as covered.

### **1008.6 COMMAND STAFF RESPONSIBILITIES**

**Best Practice**

The Chief of Police should communicate to all supervisors the prohibition against retaliation.

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Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including but not limited to:

- (a) Communicating to all members the prohibition against retaliation.
- (b) The timely review of complaint investigations.
- (c) Remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.
- (d) The timely communication of the outcome to the complainant.

#### **1008.7 WHISTLE-BLOWING**

##### **State**

California law protects members who (Labor Code § 1102.5; Government Code § 53296 et seq.):

- (a) Report a violation of a state or federal statute or regulation to a government or law enforcement agency, including the member's supervisor or any other member with the authority to investigate the reported violation.
- (b) Provide information or testify before a public body if the member has reasonable cause to believe a violation of law occurred.
- (c) Refuse to participate in an activity that would result in a violation of a state or federal statute or regulation.
- (d) File a complaint with a local agency about gross mismanagement or a significant waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Members shall exhaust all available administrative remedies prior to filing a formal complaint.
- (e) Are family members of a person who has engaged in any protected acts described above.

Members are encouraged to report any legal violations through the chain of command (Labor Code § 1102.5).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to the Professional Standards Unit for investigation pursuant to the Personnel Complaints Policy.

##### **1008.7.1 DISPLAY OF WHISTLE-BLOWER LAWS**

##### **State**

The Department shall display a notice to members regarding their rights and responsibilities under the whistle-blower laws, including the whistle-blower hotline maintained by the Office of the Attorney General (Labor Code § 1102.8).

#### **1008.8 RECORDS RETENTION AND RELEASE**

##### **Best Practice**

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The Records Supervisor shall ensure that documentation of investigations is maintained in accordance with the established records retention schedules.

#### **1008.9 TRAINING**

Best Practice **MODIFIED**

The policy should be reviewed with each new member.

All members should receive periodic refresher training on the requirements of this policy.